

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

DENNIS J. ABBOTT, *et al.*,

Plaintiffs

v.

U.S.A., *et al.*,

Defendants

Civil No. 96-55-P-C

GENE CARTER, District Judge

ORDER ON THE RECOMMENDED DECISION OF THE MAGISTRATE JUDGE

On January 3, 1997, United States Magistrate Judge Cohen filed with the Court his Recommended Decision regarding the separate Motions to Dismiss the Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and (6) filed by Defendants, the United States of America and the International Federation of Professional and Technical Engineers, Local 4 (the "Union"). Plaintiffs filed an Objection to the Magistrate Judge's Recommended Decision (Docket No. 22) on January 21, 1997, requesting *de novo* review of the Magistrate Judge's Recommended Decision and findings pursuant to 28 U.S.C. § 636(b)(1)(B), and further supplemented their Objection on February 26, 1997 (Docket No. 27). The Union and the United States responded to the Plaintiffs' Objection on February 7, 1997 (Docket No. 24), and February 14, 1997 (Docket No. 25), respectively.

The Court has reviewed and considered the Magistrate Judge's Recommended Decision

as well as the entire record. The Court has made a *de novo* determination of the matters adjudicated by the Magistrate Judge and concurs with the Magistrate Judge's recommendations.

In considering the arguments raised in Plaintiffs' Objection, the Court rejects Plaintiffs' assertion that a six-year statute of limitations applies to Plaintiffs' claims because "[t]he essence of the plaintiffs' claims is . . . the overtime back pay they are entitled to pursuant to the Back Pay Act, 5 U.S.C. § 5596." Plaintiffs' Memorandum in Support of Their Objection to Magistrate's Recommended Decision (Docket No. 22) at 8. The Back Pay Act does not provide an independent basis of jurisdiction for Plaintiffs' claims. *United States v. Connolly*, 716 F.2d 882, 887 (Fed. Cir. 1983) ("The Back Pay Act is merely derivative in application; it is not itself a jurisdictional statute."). As one court has explained:

The Back Pay Act does not . . . provide Plaintiff with a means of bringing suit where a cause of action . . . would not otherwise exist. It exists in tandem with CSRA [the Civil Service Reform Act, 5 U.S.C. §§ 7101 *et seq.*]. The substantive right to review of an adverse personnel action is provided by CSRA; the Back Pay Act permits money damages if the complainant bringing suit under CSRA prevails.

Leistiko v. Secretary of the Army, 922 F. Supp. 66, 75 (N.D. Ohio 1996). Because the CSRA does not provide Plaintiffs with a right of judicial review under these circumstances, *see* the Magistrate Judge's Recommended Decision at 7-9, Plaintiffs cannot rely on the Back Pay Act for a longer statute of limitations period. *Id.* ("The Back Pay Act applies only when a court has jurisdiction to entertain the plaintiff's suit under CSRA or some other statute."). Because the Back Pay Act is not a basis of jurisdiction for Plaintiffs' claims, Plaintiffs cannot benefit from the longer statute of limitations period applicable to a Back Pay Act claim.

Plaintiffs attempt to further bolster their argument in favor of a six-year statute of

limitations period by pointing to a 1982 Federal Personnel Manual letter (FPM 551-18), (Exhibit J), which indicates that the administrative statute of limitations for FLSA claims is six years.

However, the administrative statute of limitations does not apply to court actions. *Hickman v.*

United States, 10 Cl. Ct. 550, 552 (1986). According to the *Hickman* court,

When the FLSA was made applicable to federal employees in 1974 . . . , the FLSA's statute of limitations was not altered, and no congressional intent was manifested in the amending language or its underlying legislative history that federal employees would be accorded a more liberal limitations period than employees in the private sector.

Id. Therefore, the administrative period of limitations has no bearing on the statute of limitations for FLSA claims in court actions, which is governed by 29 U.S.C. § 255(a). The Magistrate Judge correctly applied the two-year statute of limitations under section 255(a).

Accordingly, it is hereby **ORDERED** that the Recommended Decision of the Magistrate Judge be, and it is hereby, **ADOPTED**. Defendants' Motions to Dismiss are hereby **GRANTED**.

GENE CARTER
District Judge

For the Court

By: _____

Dated at Portland, Maine this 29th day of September, 1997.